*PNS Stores, Inc. v. Rivera ex rel. Rivera*, 379 S.W.3d 267, 271-72 (Tex. 2012)

**A. Void and Voidable Judgments**

Because there is some inconsistency in our state's jurisprudence concerning important distinctions between void and voidable judgments and direct and collateral attacks, we begin our analysis with a discussion of clarifying principles. It is well settled that a litigant may attack a void judgment directly or collaterally, but a voidable judgment may only be attacked directly. *Hagen v. Hagen,* [282 S.W.3d 899, 902](https://casetext.com/case/hagen-v-hagen-2#p902) (Tex.2009) (holding that a divorce decree must be “void, not voidable, for a collateral attack to be permitted”); *Ramsey v. Ramsey,* [19 S.W.3d 548, 552](https://casetext.com/case/ramsey-v-ramsey#p552) (Tex.App.—Austin 2000, no pet.). A direct attack—such as an appeal, a motion for new trial, or a bill of review—attempts to correct, amend, modify or vacate a judgment and must be brought within a definite time period after the judgment's rendition. A void judgment, on the other hand, can be collaterally attacked at any time. *In re E.R.,* ––– S.W.3d ––––, –––– (Tex.2012). A collateral attack seeks to avoid the binding effect of a judgment in order to obtain specific relief that the judgment currently impedes. *Browning v. Prostok,* [165 S.W.3d 336, 346](https://casetext.com/case/browning-v-prostok#p346) (Tex.2005). After the time to bring a direct attack has expired, a litigant may only attack a judgment collaterally. ”)

Our Rules of Civil and Appellate Procedure and the Texas Civil Practice and Remedies Code define the limitations periods for direct attacks. SeeTex.R. Civ. P. 329b(a) (stating that “[a] motion for new trial, if filed, shall be filed prior to or within thirty days after the judgment or other order complained of is signed”); Tex.R.App. P. 26.1(a) (stating that generally, a notice of appeal must be filed within thirty days after the judgment is signed); Tex.R.App. P. 26.1(c) (explaining that “in a restricted appeal, the notice of appeal must be filed within six months after the judgment or order is signed”); Tex. Civ. Prac. & Rem.Code § 16.051 (a bill of review is governed by the residual four-year limitations period).

“While it is wholly unnecessary to appeal from a void judgment, it is nevertheless settled that an appeal may be taken and the appellate court in such a proceeding may declare the judgment void. *Fulton v. Finch,* [162 Tex. 351](https://casetext.com/case/fulton-v-finch), [346 S.W.2d 823, 827](https://casetext.com/case/fulton-v-finch#p827) (1961). ” *State ex Rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995)

void ab initio for want of subject matter jurisdiction

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is a collateral attack on the complete absence of subject matter jurisdiction of a statutory court.

the question actually breaks down into a more fundamental inquiry into the substance of the appeal.

Harris County Statutory Probate Court Number Four was foreclosed by statute from interfering with the independent administration after the inventory appraisement and list of claims had been approved and the independent executor was explicitly and specifically foreclosed by both the wills and by statute, from “**further action of any nature**” in the probate court after the inventory appraisement and list of claims had been filed by the independent executor and approved by the probate court. The Estates Code did not specifically and explicitly authorized the independent administrator taking further action of any nature in the probate court. The actions of the probate court in all matters filed in that court, after the inventory had been approved, were therefore taken in the complete absence of all jurisdiction.

The probate court below was never able to compose itself as a court of competent jurisdiction and the entire 412249-401 action is a nullity vid ab initio for want of subject matter jurisdiction and al.

Independent executor Carl Brunsting uses the label “estate of Nelva Brunsting” but never once mentions the estates code in his initial 412249-401 pleading and thus his initial pleading entirely fails to invoke the limited jurisdiction of a statutory probate court as those boundaries are strictly defined by Gov. Code 25.0021.

If the points made against the judgment are such as go to the validity of the same, it cannot be urged with any show of success that they should have been presented on the original trial. It is futile to contend that a void judgment is res adjudicata as to anything. If the judgment is void, then it is an absolute nullity, and may be assailed at any time or place, either directly or collaterally. If void, it never at any time had any existence, and could have no effect on any existing rights. Appellants may, by laches and neglect of their rights, have lost the privilege of attacking the judgment on the ground that it was voidable, but they could not by any acts, however negligent, lose the right to assail a void judgment, for it is an outlaw that any one may attack whenever the occasion offers. *White v. Hidalgo Cty. Water Improvement*, 6 S.W.2d 790, 791-92 (Tex. Civ. App. 1928)

 [Walls v. Erupcion Min. Co.](https://casetext.com/case/walls-v-erupcion-min-co?jxs=txsct,txappciv,txsecsrcs&p=1&publishedCasesOnly=true&q=a%20Void%20Judgment%20may%20be%20attacked%20at%20any%20time&sort=relevance&tab=ps&type=case&ssr=false&scrollTo=true&find=&resultsNav=false" \l "p18" \t "_blank)

6 P.2d 1021 (N.M. 1931)[Cited 7 times](https://casetext.com/case/walls-v-erupcion-min-co/how-cited?jxs=txsct,txappciv,txsecsrcs&p=1&publishedCasesOnly=true&q=a%20Void%20Judgment%20may%20be%20attacked%20at%20any%20time&sort=relevance&tab=ps&type=case&ssr=false&scrollTo=true&find=&resultsNav=false" \t "_blank)

This proceeding is undoubtedly a collateral attack upon the judgment of the probate court. It seeks to ignore that portion of the order which authorizes Royall to transfer the stock and to proceed against the defendant corporation as if the order had never been made. There seems to be no question about this, and undoubtedly there could be none. In this connection, it is to be remembered that this judgment is a judgment of a court of inferior and limited jurisdiction. It is, however, provided by statute in this jurisdiction that the same presumptions in favor of the judgment of the probate court shall be entertained as are entertained in regard to courts of general jurisdiction. See 1929 Comp. § 34-413. We have then a case of a judgment of a court which is being collaterally attacked and as to which the same presumptions as to jurisdiction and regularity prevail as prevail in regard to judgments of courts of general jurisdiction. But presumptions in regard to jurisdiction do not create jurisdiction in any court where jurisdiction does not in fact exist. Jurisdiction is the power of the court over the subject-matter and under any circumstances the right to hear and determine litigation in regard thereto. If the court has not the power under any circumstances to hear and determine questions concerning a given subject-matter, then it has no jurisdiction and no presumption in favor of any such jurisdiction will avail the litigant. The judgment in such a case is a nullity, and as Mr. Freeman says in his work on Judgments, p. 643, vol. 1: "A judgment void upon its face and requiring only an inspection of the record to demonstrate its invalidity is a mere nullity, in legal effect no judgment at all, conferring no right and affording no justification. Nothing can be acquired or lost by it; it neither bestows nor extinguishes any right, and may be successfully assailed whenever it is offered as the foundation for the assertion of any claim or title. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. The purchaser at a sale by virtue of its authority finds himself without title and without redress. No action upon the part of the plaintiff, no inaction upon the part of the defendant, no resulting equity in the hands of third persons, no power residing in any legislative or other department of the government, can invest it with any of the elements of power or of vitality. It does not terminate or discontinue the action in which it is entered, nor merge the cause of action; and it therefore cannot prevent the plaintiff from proceeding to obtain a valid judgment upon the same cause, either in the action in which the void judgment was entered or in some other action. The fact that the void judgment has been affirmed on review in an appellate court or an order or judgment renewing or reviving it entered adds nothing to its validity. Such a judgment has been characterized as a dead limb upon the judicial tree, which may be chopped off at any time, capable of bearing no fruit to plaintiff but constituting a constant menace to defendant."

## In re United Services Auto. Ass'n, 307 S.W.3d 299 (Tex. 2010)

Texas has some 3, 241 trial courts within its 268, 580 square miles. Jurisdiction is limited in many of the courts; it is general in others. *Compare*[TEX. GOV'T CODE § 25.0021](https://casetext.com/statute/texas-codes/government-code/title-2-judicial-branch/subtitle-a-courts/chapter-25-statutory-county-courts/subchapter-b-general-provisions-relating-to-statutory-probate-courts/section-250021-jurisdiction) (describing jurisdiction of statutory probate court), *withid.* § 24.007-.008 (outlining district court jurisdiction); *Thomas v. Long*, [207 S.W.3d 334, 340](https://casetext.com/case/thomas-v-long#p340) (Tex. 2006) (rioting that Texas district courts are courts of general jurisdiction). We have at least nine different types of trial courts, although that number does not even hint at the complexities of the constitutional provisions and statutes that delineate jurisdiction of those courts. *See* OFFICE OF COURT ADMINISTRATION, 2008 ANNUAL REPORT, TEXAS JUDICIAL SYSTEM. SUBJECT-MATTER JURISDICTION OF THE COURTS *passim* (2008), *available at http-/www.court.state.tx.us/pubs/AR2008/jud branch/2a-subject-matter-jurisdiction-of-courts.pdf*; GEORGE D. BRADEN ET AL., THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 367 (1977). Statutory county courts (of which county courts at law are one type) usually have jurisdictional limits of $100,000, *see* [*TEX.*](https://casetext.com/statute/texas-codes/government-code/title-2-judicial-branch/subtitle-a-courts/chapter-25-statutory-county-courts/subchapter-a-general-provisions/section-250003-jurisdiction)GOV'T CODE § 25.0003(c)(1), unless, of course, they do not, *see, e.g.*, [TEX. GOV'T CODE §§ 25.0732(a)](https://casetext.com/statute/texas-codes/government-code/title-2-judicial-branch/subtitle-a-courts/chapter-25-statutory-county-courts/subchapter-c-provisions-relating-to-particular-counties/section-250732-effective-until-112025-el-paso-county-court-at-law-provisions) (El Paso County), 25.0862(a) (Galveston County), 25.0942(a) (Gregg County), 25.1322(a) (Kendall County), 25.1802(a) (Nueces County), 25.2142(a) (Smith County); *see also Sultan v. Mathew*, [178 S.W.3d 747, 756](https://casetext.com/case/sultan-v-mathew-2#p756) (Tex. 2005) (Hecht, J., dissenting) (observing that "[m]onetary jurisdictional limits on statutory county courts are generally from $500 to $100,000, but they vary widely from county to county, and many such courts have no monetary limits"). Appellate rights can vary depending on which court a case is filed in, even among trial courts with concurrent jurisdiction, and even when the same judge in the same courtroom presides over two distinct courts. *See, e.g., Sultan*, [178 S.W.3d at 752](https://casetext.com/case/sultan-v-mathew-2#p752) (holding that there was no right of appeal to courts of appeals from cases originating in small claims courts, but recognizing that justice court judgment would be appealable); *see also id.* at 754-55 (Hecht, J., dissenting) (noting that the same justice of the peace hears small claims cases and justice court cases). Consider the five-step process involved in determining the jurisdiction of any particular trial court:

*In re United Services Auto. Ass'n*, 307 S.W.3d 299, 302-03 (Tex. 2010)

[R]ecourse must be had first to the Constitution, second to the general statutes establishing jurisdiction for that level of court, third to the specific statute authorizing the establishment of the particular court in question, fourth to statutes creating other courts in the same county (whose jurisdictional provisions may affect the court in question), and fifth to statutes dealing with specific subject matters (such as the Family Code, which requires, for example, that judges who are lawyers hear appeals from actions by non-lawyer judges in juvenile cases).

*In re United Services Auto. Ass'n*, 307 S.W.3d 299, 303-04 (Tex. 2010)

A judgment is void if rendered by a court without subject matter jurisdiction. *Mapco*, *Inc. v. Forrest*, [795 S.W.2d 700, 703](https://casetext.com/case/mapco-inc-v-forrest#p703) (Tex. 1990).